(2) Supreme Court, U.S.
FILED
041163 JAN 4 - 2005
OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM, 2005

RANDALL G. STEPHENS

Petitioner,

v.

UNION CARBIDE CORPORATION ET. AL., DR. WILLIAM H. JOYCE AND JUDGE JANET R. BURNSIDE,

Respondents.

ON PETITION FOR A EXTRAORDINARY WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL APPENDIX FOR PETITION FOR A EXTRAORDINARY WRIT OF CERTIORARI

RANDALL G. STEPHENS,
Petitioner Pro se
3434 East 117th. Street
Cleveland, Ohio 44120-4308
(216) 491-8566

APPENDIX

United States District Court Northern District of Ohio
Memorandum of Opinion and Order of Judge Ann Aldrich
Dated September 4, 2003 31

United States District Court Northern District of Ohio
Motion For Reconsideration by Plaintiff
Dated September 22, 2003 34

United States District Court Northern District of Ohio
Motion For Reconsideration Denied by Judge Ann Aldrich
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Notice of Appeal to the United States Court of Appeals
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

RANDALL G. STEPHENS,	)	CASE NO. 1:03 CV 1483
	)	
Plaintiff,	)	JUDGE ANN ALDRICH
	)	
v.	)	MEMORANDUM OF
	)	OPINION AND ORDER
UNION CARBIDE	)	
CORPORATION, et al.,	)	
	)	
Defendants.	)	

Plaintiff pro se Randall G. Stephens filed the above-captioned action on July 17, 2003 against Union Carbide Corporation, Judge Janet R. Burnside, and Dr. William Joyce. In an entry dated August 7, 2003, plaintiff was notified that there were no facts alleged in the complaint which could be construed to set forth a valid federal claim for relief, and he was ordered to file an amended complaint setting forth a valid claim within 15 days. Plaintiff filed an amended complaint on August 18, 2003.

The amended complaint alleges plaintiff made a

Workers' Compensation claim in 1969, which was allowed in 1971. The decision to allow the claim was appealed, however, and apparently reversed. Plaintiff asserts that the decision overturning the allowance of his claim resulted from improper use of the Workers' Compensation Appellate Procedure and Ohio Rule of Civil Procedure 12(B)(1), thereby violating plaintiff's right to due process of law.

Principles requiring generous construction of pro se pleadings are not without limits. See Wells v. Brown, 891 F. 2d 591, 594 (6th Cir. 1988); Beaudett v. City of Hampton, 775 F. 2d 1274, 1277 (4th Cir. 1985). A complaint must contain either direct or inferential allegations respecting all the material elements of some viable legal theory to satisfy federal notice pleading requirements. See Schied v. Fanny Farmer Candy Shops, Inc., 859 F. 2d 434, 437 (6th Cir. 1988). Further, legal conclusions alone are not sufficient to present a valid claim, and this court is not required to accept unwarranted factual inferences. Morgan v. Church's Fried

Chicken, 829 F. 2d 10, 12 (6th Cir. 1987); see also, Place v. Shepherd, 446 F. 2d 1239 (6th Cir. 1971) (conclusory section 1983 claim dismissed). Even liberally construed, the amended complaint does not contain allegations reasonably suggesting plaintiff might have a valid federal claim. See, Lillard v. Shelby County Bd. of Educ., 76 F.3d 716 (6th Cir. 1996) (court not required to accept summary allegations or unwarranted legal conclusions in determining whether complaint states a claim for relief.

Accordingly, this action is dismissed.

IT IS SO ORDERED.

s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

RANDALL G. STEPHENS,	)	CASE NO. 1:03 CV 1438
	)	
Plaintiff,	)	JUDGE ANN ALDRICH
v.	)	
	)	
UNION CARBIDE CORPORATION, et al.,	)	JUDGMENT ENTRY
	)	
	)	
Defendants.	)	

This Court having contemporaneously filed its Memorandum of Opinion in this case, it is therefore ORDERED that this action is dismissed. Further, the court certifies, pursuant to 28 U. S. C. Sec. 1915 (a) (3), that an appeal from this decision could not be taken in good faith.

The Case Management Conference set for September 26, 2003 is cancelled.

s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: September 4, 2003

IN THE UNITED STATES DISTRICT COURT FOR THE

NOTHERN DISTRICT OF OHIO NOTHERN DIVISION

Randall G. Stephens 3434 East 117th> Street Cleveland, Ohio 44120-4308 Plaintiff, vs. Union Carbide Corporation C. T. Corporation Systems 1300 East 9th. Street and Judge Janet R. Burnside, Justice Center Court Room 19 1200 Ontario Street Cleveland, Ohio 44113 and Dr. William H. Joyce, President of the Union Carbide Corporation 39 Ridgebury Road Danbury, Connecticut 06817	) Case Number 1:03CV 1438)	HONORABLE JUDGE ANN ALDRICH PRESIDING COURT ROOM 17-B MOTION FOR RECONSIDERATION

MOTION

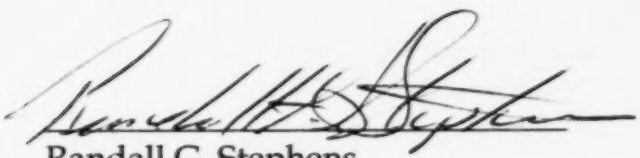
Now comes Plaintiff Randall G. Stephens, Pro se and

Respectfully request the Honorable Judge Ann Aldrich, to reconsider her Memorandum of Opinion and Order entry of September 4, 2003 at 3:45 P. M., which was based on the incorrect assumption that my claim had been reversed. The fact is that the Plaintiff has won every appeal of the Defendant Union Carbide Corporation et. al., in the Workers' Compensation Appellate Procedure.

Consequently Plaintiff is entitled to have his case heard with the proper assessment of facts.

September 22, 2003 A. D.

Respectfully submitted by,



Randall G. Stephens,
Plaintiff Pro se
3434 East 117th. Street
Cleveland, Ohio 44120-4308
(216) 491-8566

MOTION DENIED 10-2-03
IT IS SO ORDERED U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

Randall G. Stephens 3434 East 117th. Street Cleveland, Ohio 44120-4308	)	CASE NO. 1:03 CV 1483
Appellant,	)	HONORABLE JUDGE
vs.	)	ANN ALDRICH
Union Carbide Corporation C. T. Corporation Systems 1300 East 9th. Street Cleveland, Ohio 44114	)	PRESIDING COURT ROOM 17-B
and	)	
Judge Janet R. Burnside, Justice Center Court Room 19A 1200 Ontario Street Cleveland, Ohio 44113	)	
and	)	
Dr. William h. Joyce, President of the Union carbide Corporation 39 Ridgebury Road Danbury, Connecticut 06817	)	
Appellees.	)	NOTICE OF APPEAL

Notice is hereby given that Plaintiff Randall G. Stephens, Pro se in the above named case, hereby appeal to the United States Court of Appeals for the Six Circuit from the Order denying Plaintiff's Motion For Reconsideration which was entered on October 2, 2003.

October 9, 2003 A. D.

Respectfully submitted by,

Randall G. Stephens,
Plaintiff Pro se
3434 East 117th. Street
Cleveland, Ohio 44120-4308
(216) 491-8566

No. 03-4418

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RANDALL G. STEPHENS,	)	FILED
	)	
Plaintiff-Appellant,	)	FEB 05 2004
	)	
v.	)	LEONARD GREEN,
	)	Clerk
UNION CARBIDE CORPORATION;	)	
JANET R. BURNSIDE;	)	
WILLIAM H. JOYCE,	)	
	)	
Defendants-Appellees.	)	

Before: BATCHELDER, GIVVONS, and COOK, Circuit Judges.

This matter is before the court upon consideration of the appellant's response to this court's order directing him to show cause why his appeal should not be dismissed for lack of jurisdiction on the basis of a late notice of appeal. The appellant responded by arguing that this court has jurisdiction because he filed a motion in the district court which tolled the appeal period as provided by Fed. R. App.

P. 4(a)(4), and that he timely appealed after a decision was made on his motion for reconsideration.

It appears from the documents before the court that the district court's memorandum opinion and separate judgment were entered September 4, 2003. An appellant can toll the appeal period by timely filing a Fed. R. Civ. P. 59(e) motion is required to be filed no later than ten days after entry of the judgment, the motion was required to be filed by September 18, 2003. See Fed. R. P. 6(a) and 59(e). The Fed. R. Civ. P. 59(e) motion filed on September 22, 2003 was late and failed to toll the appeal period. The motion for reconsideration was denied by order entered October 2, 2003. The notice of appeal filed on October 9, 2003 was late as it may apply to the September 4, 2003 judgment. See Fed. R. App. P. 4(a) and 26(a). Because the motion for reconsideration may be treated as a Fed. R. Civ. P. 60(b) motion for relief, the notice of appeal was timely filed from the denial of that motion. See Feathers v.

Chevron U. S. A., Inc., 141 F. 3d 264, 268 (6th Cir. 1998).

The failure of appellant to timely file a notice of appeal deprives an appellate court of jurisdiction. Compliance with Fed. R. App. P. 4(a) is a mandatory and jurisdictional prerequisite which this court can neither waive nor extend. Baker v. Raulie, 879 F. 2d 1396, 1398 (6th Cir. 1989) (per curiam). Fed. R. App. P. 26(b) specifically provides that this court may not enlarge the time for filing a notice of appeal.

Accordingly, it is ordered that the appeal is dismissed for lack of jurisdiction as it applies to the judgment entered September 4, 2003. Only issues regarding the order denying reconsideration may be raised on appeal.

ENTERED BY ORDER OF THE COURT

_____

Clerk

No. 03-4418

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RANDALL G. STEPHENS,	)	
	)	
Plaintiff - Appellant,	)	
	)	
v.	)	ORDER
	)	
UNION CARBIDE CORP.; JANET R. BURNSIDE; WILLIAM H. JOYCE.	)	
	)	
Defendants - Appellees.	)	
	)	

The appellant, proceeding pro se, has submitted a letter with a doctor's statement which is construed as a motion to expedite this appeal for decision. Upon consideration of the motion, it is GRANTED and the appeal shall be scheduled for submission to a three-judge hearing panel for decision as expeditiously as possible.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT

Leonard Green, Clerk

No. 03-4418

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RANDALL G. STEPHENS,	)	FILED
	)	NOV 4 2004
Plaintiff-Appellant,	)	LEONARD GREEN,
	)	Clerk
v.	)	ORDER
	)	
UNION CARBIDE CORPORATION; JANET R. BURNSIDE; WILLIAM H. JOYCE,	)	
	)	
Defendants-Appellees.	)	

Before: KEITH, CLAY, and BRIGHT,* Circuit Judges.

Randall G. Stephens, an Ohio resident proceeding pro se, appeals the denial of his motion for relief from judgment in a civil rights case. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Stephens filed the instant action against Union Carbide Corporation (Union), his former employer; Dr. William H. Joyce (Joyce), the president of Union; and Judge Janet R. Burnside, an Ohio judge who presided over an intentional tort action filed by Stephens regarding payment of previously awarded Ohio workers' compensation benefits. Stephens alleged that pursuant to 42 United States Code Sections 1981, 1983 and 1985, his civil rights were violated when the defendants conspired to deny him payment of his workers' compensation benefits. According to Stephens, he was awarded certain workers' compensation benefits which Union has failed to pay. Consequently, Stephens filed an action in an Ohio court which was dismissed without prejudice by Judge Burnside. Stephens then filed the complaint, and Judge Burnside dismissed the complaint with prejudice. Stephens then filed the instant complaint in the district court requesting $1,600,380,985.60 in damages. The district court ordered Stephens to amend his complaint

and set forth a cognizable federal claim. Stephens filed an amended complaint alleging that Union and Joyce improperly used the workers' compensation appellate procedure and that Judge Burnside improperly used Ohio R. Civ. P. 12(B)(1) to dismiss his complaint. The district court determined that Stephens's amended complaint did not contain "allegations reasonably suggesting plaintiff might have a valid federal claim" and sua sponte dismissed the complaint. Stephens filed a motion for reconsideration stating that the district court wrongly assumed that his workers' compensation award had been reversed. The district court denied Stephens's motion. Stephens filed a notice of appeal from the judgment; however, this court issued an order allowing Stephens to appeal only the order denying reconsideration. Furthermore, because Stephens's motion for reconsideration was not timely filed in the district court, this court has determined that it will treat Stephens's motion for reconsideration as a motion for relief from

Judgment. See Fed. R. Civ. P. 60(b).

An order denying a motion under Rule 60(b) is examined for an abuse of discretion on appeal. See Hood v. Hood, 59 F. 3d 40, 42 (6th Cir. 1995). Moreover, "[a] party seeking relief from judgment under Rule 60(b) must show that its case comes within the provisions of the Rule." Lewis v. Alexander, 987 F. 2d 392, 396 (6th Cir. 1993). Relief is available under 60(b) for any of six specific reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which

> it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b). An appeal regarding the denial of a Rule 60(b) motion does not bring the underlying judgment up for review. See United States v. Grable, 25 F. 3d 298, 301-02 (6th Cir. 1994).

Stephens argues that he should be granted relief from judgment because the district court mistakenly based its ruling on the incorrect fact that his award of workers' compensation benefits had been reversed. While Stephens does not enumerate which subsection he relies on for relief, to the extent that he alleges a mistake under Rule 60(b)(1), the issue of whether or not Stephens's workers' compensation award had been reversed was irrelevant to the

district court's determination that Stephens failed to allege a cognizable federal claim in his amended complaint. Furthermore, to the extent that Stephens seeks relief pursuant to Rule 60(b)(6), he has not established an 'unusual and extreme situation [ ] where principles of equity mandate relief." See Olle v. Henry & Wright Corp., 910 F. 2d 357, 365 (6th Cir. 1990). Consequently, the district court did not abuse its discretion when it denied Stephens's motion for relief from judgment.

For the foregoing reasons, the district court's judgment is affirmed pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, FOOM 532
POTTER STEWART U. S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Filed: November 26, 2004

Geri M. Smith
Northern District of Ohio at Cleveland
801 W. Superior Avenue
Suite 100 Carl B. Stokes U. S. Courthouse
Cleveland, Ohio 44113-1830

RE: 03-4418
Stephens vs. Union Carbide Corp.
District Court No. 03-01483

Enclosed is a copy of the mandate filed in this case. The certified record was never sent to this Court on appeal.

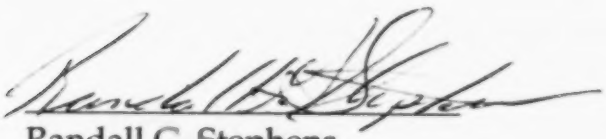
Leonard Green, Clerk

(Ms.) Valerie Fields
Deputy Clerk

cc:
Honorable Ann Aldrich
Mr. Randall G. Stephens
Mr. Jeffrey J. Wedel
Mr. Gregory T. Hoffpauir

February 22, 2005 A. D.

Respectfully submitted by,



Randall G. Stephens,
Petitioner Pro se
3434 East 117th. Street
Cleveland, Ohio 44120-4308
(216) 491-8566

CERTIFICATON OF SERVICE

I Randall G. Stephens on February 22, 2005 placed in the care of the United States Postal Service the original and Forty-one copies of my Supplemental Appendix for Petition for a Extraordinary Writ of Certiorari addressed to William K. Suter, Clerk of Court of the Supreme Court of the United States, Washington, D. C. 20543-0001.

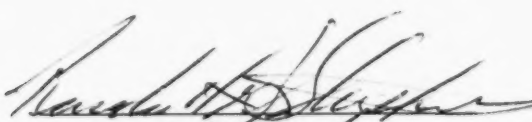
Three copies of by Supplemental Appendix for Petition for a Extraordinary Writ of Certiorari addressed to Attorney

Jeffrey J. Wedel, of Squire, Sanders & Dempsey 4900 Key Tower 127 Public Square Cleveland, Ohio 44114-1304.

Three copies of my Supplement Appendix for Petition for a Extraordinary Certiorari addressed to Attorney Gregory T. Hoffpauir, of Montgomery, Rennie & Jonson 36 East Seventy Street, Suite 2100 Cincinnati, Ohio 45202.

February 22, 2005 A. D.

Respectfully submitted by,



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